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March 29, 2016

Addendum No. 1

to

Request for Qualifications (RFQ)

Dated March 8, 2016

Legal Services for Procurement of
Next-Generation Clipper® System

Dear Counsel:

This letter is Addendum No. 1 to the Request for Qualifications dated March 8, 2016 for Legal Services for Procurement of Next-Generation Clipper® System (RFQ). Where text is revised, deleted text is shown in strike-through format; added text is *italicized*. The RFQ is revised as follows:

<u>Addendum Item</u>	<u>Reference</u>	<u>Change</u>
1.	RFQ, Section II. <u>Minimum Qualifications</u> , numbered paragraph 1, Page 2	1. Attorneys must be licensed to practice before the state and federal courts in one of the states of the United States and be in good standing with the applicable state bar association <i>or other applicable state licensure authority</i> . At least one team attorney must be licensed to practice in the State of California and be a member of the California State Bar in good standing.
2.	RFQ, Section VII, <u>Form of SOQ</u> , numbered paragraph 8, Page 6	8. Fee proposal (Please respond to both Alternative A and Alternative B below): a. Alternative A: Hourly rates. Please provide hourly rates for all <i>each</i> proposed project personnel assuming hourly billing. Include a description of all costs and expenses that would be passed along to MTC. Also include a statement that the rates indicated shall be firm through December 31, 2016, and a description of the basis on which hourly rates will escalate, with a "not to exceed" cap.

2., Continued		<p>b. Alternative B: <i>Blended rate.</i> Please provide a proposed blended rate for all proposed attorney personnel and a separate blended rate for paralegal personnel, if applicable, assuming hourly billing. Include a description of all costs and expenses that would be passed along to MTC. Also include a statement that the blended rates indicated shall be firm through December 31, 2016, and a description of the basis on which blended rates will escalate, with a “not to exceed” cap. Fixed fee. Please provide a proposed fixed fee for the work on the next generation Clipper® system procurement through finalization of the contract(s), together with a description of the key assumptions used in developing the proposed fixed fee.</p> <p><i>In preparing the blended-rate fee proposal, please use the following assumptions:</i></p> <ul style="list-style-type: none"> • <i>The selected firm will support MTC with a single Request for Qualifications (RFQ) to be released in the fourth quarter of 2016 covering multiple specialty areas (e.g., system integrator, customer service center contractor, equipment provider, etc.) and a single Request for Proposals (RFP) for the system integrator role (where other functions such as customer service and equipment will be provided by a subcontractor or the integrator, if qualified) to be released in the second or third quarter of 2017.</i> • <i>There will be at least five addenda in the RFQ process and at least five addenda and at least three Requests for Best and Final Offer in the RFP process.</i> • <i>The selected firm will be the lead drafter of the general terms and conditions and potentially other business terms for the system integrator contract, and the selected firm will play a key role in reviewing each procurement document and the entire contract for internal consistency and to spot legal issues.</i> • <i>While MTC’s boilerplate procurement and contract documents will be a basis for the RFQ, RFP and contract, the selected firm will need to supplement those documents with a number of project-specific terms and conditions.</i> • <i>The selected firm will be called upon to advise MTC throughout the development, implementation and finalization of the procurements and contract to answer questions that may arise in the areas of specialty noted in this RFQ. Please note that MTC has a contract with a consultant (IBI, Inc.) to serve as technical advisor on the Project. MTC expects that IBI, Inc., will be the lead drafter of the technical specifications for the contract.</i>
3.	RFQ, Appendix D, MTC Standard	LEGAL COUNSEL shall permit MTC and its authorized representatives to have access to LEGAL COUNSEL's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription

MTC Legal Services for Procurement of Next Generation Clipper® System RFQ

Addendum No. 1

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	Consultant Contract, Article 13, <u>Audits</u> , pages 12 and 13	during the term of this Agreement, and for the period specified in Article 12. <i>For the avoidance of doubt, such access shall only be granted with respect to those materials that are relevant to LEGAL COUNSEL's engagement with MTC, and such access shall not be granted to books, records, accounts, work product, materials, or other data relevant to clients other than MTC.</i> LEGAL COUNSEL shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.
4.	RFQ, Appendix D, MTC Standard Consultant Contract, Article 17, <u>Interest of the Legal Counsel</u> , page 14	LEGAL COUNSEL covenants that it has a duty to disclose any potential conflicts of interest and has disclosed any potential conflicts of interest existing at the time of execution of the Agreement. LEGAL COUNSEL will otherwise act in accordance with its ethical obligations in performing its work for MTC. <i>MTC acknowledges that LEGAL COUNSEL regularly performs legal services for many private and public entities in connection with a wide variety of matters. For example, LEGAL COUNSEL has represented, is representing or may in the future represent other public entities or private entities such as [list to be revised as appropriate: contractors, suppliers, banks, accountants and advisors] and others who may have a role or interest in the Project or that may be involved with or adverse to MTC in this or some other matter. LEGAL COUNSEL agrees not to represent any such entity, whether in connection with the Project or in connection with any other matter, that is adverse to a matter upon which LEGAL COUNSEL is advising MTC, during the term of this Agreement, without the written consent of the MTC General Counsel or her designee.</i>
5.	RFQ, Section IX.C, Selection Disputes, numbered paragraph 3 and the following full paragraph, second instance of page 2	3. Not later than 4:00 p.m. on the third business day after the date the firm is notified that it was not selected, or if applicable the date the appropriate committee(s) authorizes award, whichever is later, for objections to the ultimate firm selection. Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the MTC Administration Committee <i>applicable MTC committee and, if applicable, the Clipper® Executive Board</i> , authorizes award.

The remaining provisions of the RFQ remain unchanged. In the event of a conflict between this Addendum and the previous version(s), this Addendum takes precedence.

Requests for clarification and exceptions and answers regarding the RFQ are enclosed with this Addendum as Question and Answer Document No. 1.

MTC Legal Services for Procurement of Next Generation Clipper® System RFQ

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Any questions concerning this Addendum to the RFQ should be directed to Brooke Abola, MTC Senior Counsel at babola@mtc.ca.gov.

Sincerely,

DocuSigned by:
Steve Heminger
021DA2847D43405...
Steve Heminger
Executive Director

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REQUEST FOR QUALIFICATIONS (RFQ)

Question and Answer Document No. 1

Dated March 29, 2016

LEGAL SERVICES FOR PROCUREMENT OF NEXT-GENERATION CLIPPER® SYSTEM

- Q1:** In regards to (1) under Minimum Qualifications: Do all attorneys need to be members of their state bar association if membership is optional under their state's licensure guidelines? For example, the state of Illinois does not require state bar association membership and only requires state licensure in order for an attorney to be in good standing. Please advise if in this circumstance an attorney would also need to belong to the state bar association.
- A1:** See Addendum No. 1, Item No. 1.
- Q2:** Please indicate whether the possibility of additional funding in excess of the \$450,000 allocated through June 30, 2018 means that additional funding will be available after this fiscal year, or after June 30, 2018.
- A2:** As stated in the RFQ Section III.C, Budget, on page 3, MTC anticipates an approximate budget of \$450,000 from the date of the RFQ through June 30, 2018. Funding for each fiscal year (including fiscal years ending June 30, 2016, 2017 and 2018, and beyond) is subject to approval of MTC's annual agency budget.
- Q3:** We plan to submit a fixed fee through the finalization of the contracts, together with the key assumptions we used in developing the fixed fee, as requested in the RFQ. In the event that unexpected issues come to light while working on the contracts, is MTC willing to renegotiate the fixed fee?
- A3:** See Addendum No. 1, Item No. 2.
- Q4:** To assist in the development of an alternate fixed fee proposal, please clarify what deliverables MTC anticipates will be required, and the schedule of any internal / external deadlines that are known at this time.
- A4:** See Addendum No. 1, Item No. 2.
- Q5:** With regard to the Price Proposal, Section VII requests proposals based on a) hourly rates, and b) fixed fees. The scope of work that would be encompassed by a fixed fee based on the RFQ is unclear. Is MTC requesting fixed budgets for one or more of the bulleted elements of the scope of work on page 2, or a lump sum for all of the work? Please clarify MTC's intent.
- A5:** See Addendum No. 1, Item No. 2.

- Q6:** Would MTC be willing to provide insight into how SOQs are evaluated? For example, is particular scoring system used? Are some criteria weighted more heavily than others? If so, which ones?
- A6:** In RFQ Section VIII.C, Evaluation Panel and Evaluation Criteria, MTC's evaluation factors are listed in descending order of relative importance.
- Q7:** If a proposed attorney team consists largely of non-California attorneys with the requisite experience and practice focus, will the composition of such a team factor into MTC's evaluation? Or is geographic location immaterial so long as the minimum qualifications are met (i.e., at least one California attorney)?
- A7:** As stated in RFQ Section VIII.C, Evaluation Panel and Evaluation Criteria, local presence of key personnel is one of the factors that will be considered in evaluating each SOQ on its overall cost effectiveness. However, as stated in the RFQ, cost effectiveness will be less important in evaluating each SOQ than the qualifications and experience of the attorneys on the Proposer's team, and travel costs of non-local key personnel will be only one component of overall cost effectiveness. Proposers are welcome to discuss in their SOQs how they would propose to minimize travel costs for non-local key personnel.
- Q8:** If geographic location of team members is a decisive factor, would MTC be willing to modify its evaluation process to remove team members' geographic location from the evaluation calculus?
- A8:** No. Please see Answer #7 above.
- Q9:** We request an exception to Section 13 (Audits) of the MTC Standard Consultant Contract to clarify that, in the event that MTC seeks access to legal counsel's books, records, accounts, and any and all work products, materials and other data relevant to this Agreement, such access shall only be granted with respect to those materials that are relevant to our engagement with MTC and that access shall not be granted to books, records, accounts, work product, materials, or other data relevant to clients other than MTC.
- A9:** See Addendum No. 1, Item No. 3.
- Q10:** Regarding the State Required Clauses (Attachment E), we are wondering whether Attachment E-2, Nondiscrimination Assurances, and its appendices are applicable to a professional services contract such as this. Some of the Assurances seem to contemplate a real estate transaction. Please clarify to what extent if at all these covenants apply to this project.
- A10:** The requirements of Attachment E apply to the extent indicated in Attachment E itself. For example, see paragraphs 3 and 4 of Attachment E-2.
- Q11:** If we are selected for this project, we would request that MTC agree that our engagement is limited solely to representing MTC in connection with professional legal services in support of MTC's procurement of a next-generation Clipper electronic fare payment system, and for the scope of work as identified in Attachment A (page 17) of the RFQ.
- A11:** MTC expects that Legal Counsel's general scope of work will be as listed in Attachment A, Scope of Work, to Appendix D, MTC Standard Consultant Contract, to the RFQ.

MTC's procurement rules would not allow it to expand this scope of work without a written amendment to the contract resulting from this RFQ or a separate written contract. However, MTC is open to adding a provision to this effect if requested by the party ultimately selected as Legal Counsel.

Q12: We would request that MTC agree that Legal Counsel's representation does not extend to any governmental entity related to MTC in the engagement.

A12: The Contract will be between MTC and Legal Counsel, and MTC does not believe further clarification as to the parties is needed. However, MTC is open to adding a provision to this effect if requested by the party ultimately selected as Legal Counsel.

Q13: As a condition to Legal Counsel's undertaking this RFQ for MTC, we would request that MTC agree to waive any conflict of interest that may be created by our representation of any existing or new clients in any current or future matter that is directly adverse to MTC and/or its various agencies, boards, commissions, and other related entities and individuals ("Adverse Matters") so long as those matters are not related to the representation of MTC. The Adverse Matters may include, but would not be limited to, transactions, adversarial proceedings and litigations. We would agree, however, that the prospective consent to conflicting representation contained in the preceding sentence would not apply in any instance where, as a result of our representation of MTC, we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to MTC's material disadvantage.

A13: MTC does not provide prospective waivers of potential conflicts of interest; these will need to be addressed on a case-by-case basis. Please see Addendum No. 1, Item No. 4.

Q14: Is the expectation that the selected firm will provide all of the procurement documents, or will said firm be asked to tailor MTC standard forms or templates?

A14: See Addendum No. 1, Item No. 2.

Q15: Please note that we cannot agree to the provision set forth at Attachment C (Insurance Provisions) – Section D (Deductibles and Retentions). We are requesting an exception to the MTC Standard Consultant Contract to strike this provision.

A15: Request denied.

Q16: As there is no DBE contract goal for this contract, which, if any of the various DBE forms are proposers required to submit with their proposals? Is it correct that there is no Contract DBE Goal, and, therefore, Appendices F3 and F4 are NOT required? If no DBE participation will be reported, do we need to complete Appendices F-1 and F-5?

A16: As per RFQ, Section VII, Form of SOQ, Item 11, Proposers are required to "Submit all completed federal-required certifications in Appendix F, Federal Requirements, related to lobbying, debarment, and Disadvantaged Business Enterprise (DBE) subcontractor information (Appendices F-1, F-2, F-3, F-4, and F-5.)" Also, as per RFQ, Section VIII, SOQ Evaluation, Article B, "Firms failing to meet the Minimum Qualifications listed in this RFQ or to satisfy the federal Disadvantaged Business Enterprise (DBE) requirements (if applicable), will not be considered responsive."

Q17: Is it possible for us to obtain copies of the forms required by Appendix D and Appendix F in a format that allows us to edit them?

A17: Word versions of Appendix D-1 and Appendices F-1 through F-5 are now posted along with the RFQ on the MTC website at <http://bids.mtc.ca.gov/procurements/243>.

Q18: Does MTC have a technical consultant assigned to this project? If so, who is it and what will their role be in the development of the procurement documents? Will the selected firm be asked to tailor standard consultant / vendor forms or templates?

A18: See Addendum No. 1, Item No. 2.

Q19: Would it be helpful to identify technical consultants and experts in addition to attorneys to form a team?

A19: This RFQ seeks legal assistance only.

Q20: To what extent is MTC planning to reuse current infrastructure or software?

A20: Please see the draft Request for Expressions of Interest (RFEI) and the attached draft C2 Concept of Operation and Lifecycle Concepts, which are now posted along with the RFQ on the MTC website at <http://bids.mtc.ca.gov/procurements/243>, for the most up-to-date, publicly-available thinking about MTC's plans in this regard.

Q21: What are MTC's particular goals or objectives for the next-generation system (e.g., projected number of transactions, capacity to evolve to meet future privacy or cybersecurity standards, integration with private transit-related services such as parking, compatibility with private e-pay systems (Apple Pay))?

A21: Please see the draft RFEI and the attached draft C2 Concept of Operation and Lifecycle Concepts, which are now posted along with the RFQ on the MTC website at <http://bids.mtc.ca.gov/procurements/243>, for the most up-to-date, publicly-available thinking about MTC's plans in this regard.

Q22: Why isn't MTC using its existing legal services bench to provide necessary support for the Project?

A22: MTC is looking for a single firm to provide advice in all the areas of specialty listed in RFQ Section III.A, Scope of Work, for this Project, and MTC's existing bench was not set up to require a single firm to qualify in all these areas. Further, the term over which MTC may require advice for this Project may extend beyond the term of the legal services bench.